

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 444 OF 2019

Dattatray Ambo Mhatre & Ors	..Petitioners.
Vs	
The State of Maharashtra & ors	..Respondents.

Mr. R.S. Kohli a/with Chandni Bhatt i/by C.K. Legal for the Petitioners.
Mrs. M.P. Thakur, AGP for Respondent No.1.
Mr. A.S. Rao for Respondent Nos. 2 to 5.
Mr. Vishesh Kalra i/by Vidhii Partners for Respondent No.6.
Mr. Sanjay Upadhyia – Chairman for Society present.

CORAM : S.J. KATHAWALLA &
B. P. COLABAWALLA, JJ.
DATED :- 20th JANUARY, 2020.

P.C. :-

1. The above Writ Petition is filed by 6 out of 32 members of Respondent No.6 - Ganesh Kripa Co-operative Housing Society Ltd., at Shivaji Road, near Sanjay Clinic, Panvel, District Raigad (for short 'the said Society'), seeking a declaration that the order dated 5th December, 2018 passed by the Commissioner, Panvel Municipal Corporation (respondent No.3) accepting the report of the expert Committee that the building of the said Society is in a very dilapidated condition and needs to be demolished and reconstructed, and also the

notice dated 31st December, 2018 issued by the Designated Ward Officer of the respondent No.4 under Section 264 of the Maharashtra Municipal Corporations Act, 1949 for demolition of the building on the ground that it is in a ruinous state and to prevent any mishap needs to be forthwith demolished, be declared as illegal, unconstitutional and void *ab initio* and the same be quashed and set aside.

2. As stated earlier, the Writ Petition is filed by only six out of 32 members of the said Society. They have through their Advocate submitted before us that all the six Petitioners are not against the redevelopment of the society building. However, by a Resolution dated 27th September, 2014 the Society appointed a builder/developer i.e. M/s Neelkanth Constructions to redevelop/reconstruct the building of the said Society and the said appointment is opposed by the petitioners. The petitioners also filed proceedings before the Co-operative Court challenging the said Resolution dated 27th September, 2014 i.e. to cancel the appointment of M/s Neelkanth Constructions as Builders/Developers to reconstruct / redevelop the Society Building. The said proceedings filed by the petitioners by an order dated 28th November, 2019 have been dismissed.

3. In the meantime, the Petitioners had also filed two Writ Petitions before this Court being Writ Petition Nos. 3365 of 2017 and 11043 of 2017 which were disposed off by an order dated 13th July, 2018. Paragraph 5 of the said order is reproduced hereunder :-

“5. We while disposing of the Petitions, we make it clear that we have made no adjudication on the present structural status of the building. It is ultimately for the Municipal Corporation to decide whether this building needs to be demolished immediately or whether the building can be repaired. We have made no adjudication on the said issues. Accordingly, we disposed of the Petitions by passing following order :-

i) We direct the Panvel Municipal Corporation to consider the report of VJTI, if necessary, after ordering an inspection of the building by expert Municipal Officers. After considering a said report of VJTI and report, if any, of the Municipal Officers, the Municipal Corporation will take appropriate decision on the issue whether it is necessary to exercise the powers under Section 264 of the said Act of 1949 by either directing demolition of the building or carrying out the repairs. The said decision shall be taken within a period of one month from the date on which this order is uploaded. The decision taken shall be communicated to the parties to the Petitions;

ii) If the Municipal Corporation decides to take action under section 264 of the said Act of 1949, notices shall be accordingly issued to the parties to the Petition and all other affected persons. If a notice is issued calling upon demolition of the building or for immediately stopping the use of the building, no action shall be taken on for a period of 15 days from the date on which the notice is served on the Petitioner in W.P.No.11043 of 2017;

iii) We make it clear that the date of communication of the decision, the Petitioners in Writ Petition No. 11043 of 2017 will continue to occupy their respective premises at their own risk;

iv) In view of the above directions, we direct that notice dated 15th September, 2016 issued by the erstwhile Panvel Municipal Council shall not be implemented;

v) We make it clear that we have made no adjudication on the present structural status of the subject buildings and all issues are left open to be decided by the Municipal Corporation;

vi) Both the Petitions are disposed of on above terms.”

4. Pursuant to the above order, the Commissioner, Panvel Municipal Corporation, on 6th October, 2018, formed a three member committee comprising of the Assistant Director of Town Planning (ADTP) of Panvel Municipal Corporation, the City Engineer of Panvel Municipal Corporation and the empanelled / structural auditors/consultant of the Corporation i.e. Yash Engineering Consultant Pvt. Ltd., Navi Mumbai, (the expert Committee) for joint inspection, and submission of report. After examining the building of the said Society and carrying out all the required tests of the building, such as (i) smidth rebound hammer test, (ii) UPV test, (iii) Half Cell Potentiometer Test and (iv) Core Test and after considering the report of VJTI, a detailed report was submitted by the expert committee on 22nd October, 2018. The recommendations and the conclusions of the said expert committee are reproduced hereunder :-

“2. Recommendation and Conclusion:-

A) Main structural Members of Building: As in most of the flats, extensive leakages have resulted in Concrete corrosion resulting into corroding of reinforcement and peeling of concrete in all the Structural members which is confirmed by Half Cell Potentiometer test.

- B) NDT Test on Concrete by Smidth Rebound Hammer Test and UPV Test indicates doubtful results of residual concrete strength which is confirmed by concrete Core Test indicating only 12N/mm².
- C) The Condition of Foundation is not known as it is hidden. However, it is quite a well known Engineering fact that Corrosion is a progressive phenomenon as it has started from roof and has reached up to ground level columns. Hence, it can be concluded that even foundation is also endangered.
- D) The condition of concealed plumbing lines and drain pipes in almost all flats is quite precarious as it is showing leakages due to internal breakages.
- E) The main access to wings by stair case/passage is also showing extensive distress endangering its stability.
- F) Overhead tank: The structure of Tank has not only showing leakages but also has corroded from bottom endangering its Stability.
- G) Infestation by Termites as it is observed in many flats, will lead to structural deterioration at faster rate.
- H) Most of the walls as observed from outside and inside has cracked with Plaster peeling off, external walls leaking at many places.
- I) Hence, in view of such Extensive Distress of RCC Frame Structure along with walls, Plaster, Service Plumbing Lines will incur heavy repair cost. The extent of Foundation distress is Not know. Hence, even if these Repairs are done, still Stability of Structure will be doubtful.

In view of the Observations noted earlier, Report of enclosed NDT Tests and their inferences, it could be concluded that the Repair Cost of Entire Building with service Pie line is

required which will incur very heavy cost. Besides that, NDT Test report indicates Doubtful strength of Concrete which is confirmed by Core Test as 12 N/mm² which is quite less as per IS:456 for any Building Structure.

Hence, it is recommended that a new structure to be constructed by Demolishing the existing Heavily Distress Building.”

5. The Commissioner, Panvel Municipal Corporation, after receiving the Report of the expert committee and after going through the reports of VJTI, Yash Engineering Consultants Pvt. Ltd. and being satisfied with the work of the expert committee constituted by him, agreed with their opinion and passed the following order :-

“The Committee constituted by the Municipal Commissioner has clearly recommended for the demolition of the existing distressed structure and a new structure to be constructed of Shree Ganesh Krupa CHS Ltd., Panvel situated on final Plot No. 126/34 and 126/4. I am also satisfied with the work of the Committee and agree with their opinion. Hence, as per the provisions of Section 264 of the Maharashtra Municipal Corporation Act, 1949. The concerned Designated Officer shall initiate the action for demolition of the building of Shri Ganesh Krupa CHS ltd., Panvel situated on Final Plot No. 126/3 and 126/4.

Designated Ward Officer is directed to issue

notices to the parties, under Section 264 of the Maharashtra Municipal Corporation Act, 1949, notices shall be accordingly issued to the parties to the Petition and all other affected persons. The notice shall be issued for the demolition of the building or for immediately stopping the use of the building, no action shall be taken on for a period of 15 days from the date on which the notice is served on the Petitioners in Writ Petition No. 11043 of 2017.

6. Pursuant to the said order, Corporation has issued notice under Section 264 of the Maharashtra Municipal Corporations Act, to the said Society.

7. As stated earlier, the said notice and the report of the Commissioner are impugned by the above Writ Petition by the six out of the thirty two members of the Society.

8. From the above facts, we are satisfied beyond any doubt that the six out of 32 members of the Society are not opposed to the development/reconstruction of the building of the said Society, but are opposed to the appointment of the Developer - M/s Neelkanth Constructions for carrying out the redevelopment work of the building of the said Society. The said developer is appointed by the majority members of the said Society. The proceedings filed by the six Petitioners herein, challenging the resolution passed by the majority members

appointing M/s. Neelkanth Constructions as developers is admittedly dismissed by the Co-operative Court in November, 2019. The Petitioners who are in minority now submit that the order of the Municipal Commissioner and the notice issued under Section 264 of the Maharashtra Municipal Corporation Act, 1949 deserves to be quashed and set aside.

9. The Commissioner has pursuant to the aforesaid order of this Court, appointed a Committee comprising of the Assistant Director of Town Planning (ADTP) of Panvel Municipal Corporation, the City Engineer of Panvel Municipal Corporation and the Structural Auditors / Consultant who are on the panel of the Corporation to inspect the building of the said Society and submit their report. The members of the expert committee have visited the site, have got all the required tests carried out and after setting out in their report the condition of the building, recommended demolition and reconstruction of the building of the said Society. The Commissioner has also by his detailed order set out the findings of the committee and has agreed with the view taken by the expert committee, i.e. to carry out demolition of the building and to reconstruct the same. Pursuant thereto, a notice is issued under Section 264 of the Maharashtra Municipal Corporations Act, 1949 for demolition

of the building.

10. We have perused the photographs of the building , a few of which are reproduced hereunder :



11. We are informed by the Advocate for the Society that except one member, all other members have vacated the building, which statement is disputed by the Advocate for the Petitioners. In any event, we see no reason to doubt the opinion and action suggested by an expert committee constituted by the Municipal Commissioner as per directions of this Court. It is because of such stubborn approach of few of the occupants of dilapidated buildings, that we repeatedly come across cases of building collapse, causing grave harm to the life and limb of the occupants and innocent passers by.

12. In view of the above, no case for interference by this Court under Article 226 of the Constitution of India is made out. The learned Advocate appearing for the petitioners have informed the Court that they are in the process of filing an appeal passed by the Co-operative Court. The decision if any filed by the Appeal Court will, in our view, not have any bearing on the subject petition. In the subject petition, we have only taken cognizance of the fact that the building is in a dilapidated/ruinous condition and needs to be demolished and reconstructed as opined by the expert committee. We are not concerned with the issue as to whether the redevelopment work should be carried out by the M/s Neelkanth

Developers or by any other Developer.

13. The above Writ Petition is therefore, dismissed. In view of the above facts, request made by the learned Advocate for the Petitioners to continue the earlier interim protection is rejected.

14. The Writ Petition is accordingly disposed of.

(B.P. COLABAWALLA, J.)

(S.J. KATHAWALLA, J.)